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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-43

In the Matter of

Amendment of Section 73.202(b). RM-8580
Table of Allotments.
FM Broadcast Stations.
(Grand Junction, Colorado)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 11, 1995; Released: January 19, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 10 FCC Rcd 4016 (1995), issued in response to a petition filed on behalf of Grand Valley Public Radio Company, Inc. ("petitioner"), permittee of noncommercial educational station KAEM(FM), Channel 201A, Grand Junction, Colorado, proposing the allotment of FM Channel 264C1 to Grand Junction to provide an additional wider coverage area FM service to that community. Petitioner filed comments in response to the *Notice*. No other comments were received.

2. Petitioner's proposal is premised on a desire to improve the service Station KAEM(FM) provides to Grand Junction. As stated in the *Notice*, according to petitioner, its present operation on Channel 201A is precluded from service improvements in the educational band due to the existence of other domestic noncommercial authorizations therein. Therefore, petitioner requested the allotment of Channel 264C1 to Grand Junction for its use to achieve its service improvement goal.¹ Although petitioner's technical engineering statement (at page 1) requested that the allotment of Channel 264C1 be "classified as a reserved channel for educational use", petitioner indicated that regardless of the ultimate channel designation, it intended to continue offering educational service to Grand Junction. In further support of its modification request, petitioner advised that

two higher class channels are available to Grand Junction in the event there are other expressions of interest in the proposal.

3. The *Notice* stated that Commission policy generally does not reserve channels in the commercial band for noncommercial educational use in allotment proceedings, except where the use of channels in the reserved FM band (Channels 201-220) are precluded due to VHF television Channel 6 interference, or the existence of Mexican or Canadian allocations, citing *Butte, Montana*, 9 FCC Rcd 2180 (1994); *Buhl, Montana*, 9 FCC Rcd 2606 (1994). As the petitioner failed to demonstrate that either of the enumerated exceptions to the Commission's policy are present to enable it to be modified to specify operation on Channel 264C1 at Grand Junction, the *Notice* proposed to allot it for commercial use, based upon the expression of interest in providing an additional wider coverage area FM service to the community. Further, petitioner was advised that should Channel 264C1 be allotted to Grand Junction, it could submit an application therefor specifying noncommercial educational programming.

4. In its comments, petitioner renewed its interest in the proposed allotment of Channel 264C1 to Grand Junction, and urged that its modification request be implemented pursuant to the provisions of Section 1.420(g) of the Commission's Rules.² Petitioner believes such modification is warranted in the absence of any other expressions of interest in this proceeding, citing in support *Vero Beach, Florida*, 4 FCC Rcd 2184 (1989).³

5. On the basis of the information provided, we affirm our belief that petitioner's proposal does not meet the criteria established to reserve a channel in the commercial band. See *Collegeville, Minnesota*, 10 FCC Rcd 3328 (1995). Moreover, although there are higher class channels that could have been allotted to Grand Junction in the event other expressions of interest in applying for Channel 264C1 had been received, we believe it is improper to apply the provisions of Section 1.420(g) of the Commission's Rules in this instance. While that rule allows the modification of an authorization to specify a non-adjacent higher class channel provided an additional equivalent or superior class channel is also available for use by other interested parties, that procedure does not apply to interband exchanges. See *Rosendale, New York*, 60 FR 54954, October 27, 1995 (*recon. pending*), and *Amendment of the Commission's Rules Regarding the Modification of FM and Television Station Licenses*, 56 F.R. 2d 1253, 1257 (1984).

6. Nevertheless, based upon the petitioner's continuing expression of interest in Channel 264C1, we will allot the channel to Grand Junction and specify an application filing window therefor. As indicated above, petitioner may

¹ In addition to Station KAEM, Grand Junction is also served locally by noncommercial educational FM Stations KQIC (Channel 203A), KPRN (Channel 208C1), KJOI (Channel 212C3) and KMSA (Channel 217A).

² In support of its continuing modification request, petitioner notes that while the *Notice* did not propose such action, the Commission's *Daily Digest* released April 14, 1995, summarized its request as proposing the allotment of Channel 264C1 to Grand Junction and modification of the construction permit of noncommercial educational station KAEM(FM), Grand Junction, accordingly. However, the *Daily Digest* advises readers that the information contained therein constitutes unofficial announcements of Commission actions, and that the release of the

full text of a Commission document constitutes official action, citing *MCI v. FCC*, 515 2d 385 (D.C. Cir. 1974).

³ The *Vero Beach, Florida*, proceeding concerned *inter alia*, the question of channel equivalency as it pertained to other expressions of interest in the petitioner's nonadjacent modification request for a commercial authorization. In that proceeding, it was established that the identity of a second equivalent channel for other expressions of interest enabled the petitioner to be modified as requested, since the second equivalent channel was made available for general application to other interested parties. However, petitioner's reliance on *Vero Beach* is misplaced in this instance. See paragraph 5, *infra*.

submit an application for the allotment during the designated filing window specifying noncommercial educational programming.

7. Channel 264C1 can be allotted to Grand Junction, Colorado, consistent with the provisions of Section 73.207(b) of the Commission's Rules, without the imposition of a site restriction. Coordinates used in this determination are 30-04-06 and 108-33-00.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **March 4, 1996**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Grand Junction, Colorado, as follows:

City	Channel No.
Grand Junction,	222C, 226C,
Colorado	264C1, 282C, 300C

9. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

10. The window period for filing applications for Channel 264C1 at Grand Junction, Colorado, will open on **March 4, 1996**, and close on **March 19, 1996**.

11. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 264C1 at Grand Junction, Colorado, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau